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EXAMINER

BIAGINI, CHRISTOPHER D

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/029,483	<b>Applicant(s)</b> BERIKER, JAMES	
	<b>Examiner</b> Christopher Biagini	<b>Art Unit</b> 2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This communication is in response to the amendment filed September 23, 2009. Claims 1-6 are pending, claim 6 having been added.

#### ***Remarks***

The Examiner wishes to respectfully remind Applicant of the need to present proper status identifiers in amendment documents that include a change to the claims. See MPEP 714(II)(C) and 37 CFR § 1.121.

Additionally, the Examiner wishes to note that Applicant has not addressed the rejection of claims 1-4 under 35 USC 112, second paragraph and has not explained why new claim 6 is believed to be patentable over the applied references. A fully responsive reply to a non-final Office action “must reply to every ground of objection and rejection in the prior Office action” and “must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.” See MPEP 714.02 and 37 CFR § 1.111.

#### ***Response to Arguments***

At the outset, Applicant argues that “Claim 6 has been added to further clarify that which is already part of claims 1-5, i.e., that while the preamble gives life to the claims, the user computer is not a component of the claimed system but rather simply provides an input received into the system.” It is not clear how the addition of claim 6 “clarifies” aspects of claims 1-5.

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Leaving aside the issue of the further narrowing element (the “purchased search term”), claim 6 would either be redundant (insofar as it recites “that which is already part of claims 1-5”) or would in fact weight against the conclusion that claims 1-5 do not include the user computer (in accordance with the doctrine of claim differentiation). In other words, with respect to the user computer, it is not clear why claim 6 is necessary if it only recites “that which is already part of claims 1-5.”

Regarding the argument that the Sugiura reference is not prior art, the Examiner respectfully disagrees. Applicant argues that the present application is supported by the provisional filed on December 21, 2000 and that Sugiura is not prior art because it “lacks support to a specific date within 2000” and therefore “its effective prior art date must be...December 31, 2000.” However, as conspicuously indicated on the form PTO-892 supplied with the previous action, Sugiura was printed in Volume 33 of the journal *Computer Networks* in June 2000. (Note that since June 2000 predates the filing of the provisional patent application, the question of support in the provisional need not be reached.) As to Applicant’s request for “leave to submit more particular information under 37 CFR § 1.131,” the Examiner respectfully submits that prosecution is now closed and therefore the submission of any such information is be governed by 37 CFR § 1.116. As MPEP 715.09 explains in relevant part:

Affidavits and declarations submitted under 37 CFR 1.131 and other evidence traversing rejections are considered timely if submitted:

- (A) prior to a final rejection;
- (B) before appeal in an application not having a final rejection; \*
- (C) after final rejection \*\*>, but before or on the same date of filing an appeal, upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented in compliance with 37 CFR 1.116(e); or

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(D) after the prosecution is closed (e.g., after a final rejection, after appeal, or after allowance) if applicant files the affidavit or other evidence with a request for continued examination (RCE) under 37 CFR 1.114 in a utility or plant application filed on or after June 8, 1995; or a continued prosecution application (CPA) under 37 CFR 1.53(d) in a design application.

Regarding the argument that the combination is improper because Sugiura teaches away from the combination, the Examiner respectfully disagrees. First, the fact that Sugiura presents his paper as an improvement upon general-purpose search engines does not remove from consideration the entire body of technology associated with those search engines. Sugiura does not discourage the combination of his system with an affiliate program like that described in AltaVista, and therefore does not teach away from the combination. Second, far from teaching away from the combination, Sugiura encourages it. A person of ordinary skill, upon reading the Sugiura reference, would have been motivated to modify the system of AltaVista with the traffic routing, traffic management parameter, and search referral module taught by Sugiura in order to provide users with high-coverage and high-precision searching (see Sugiura, Introduction, p. 1). Third, Applicant asserts that “Sugiura suggests, at most, AltaVista to refer searches to information providers based upon terms bid upon by such information providers.” It is not clear how this suggestion would weigh *against* conclusion of obviousness (indeed, such a suggestion would appear to lead a person of ordinary skill towards, rather than away from, the claimed invention). Applicant is respectfully requested to clarify this argument.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 6 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claim recites “a system for providing traffic management” which “*includes* a referral provider.” At page 2 of the specification, a “referral provider” is described as “the web master or site owner from which the traffic emanates.” In other words, the referral provider is a person. Thus, the claim encompasses embodiments in which elements of the system are implemented as people. A system including people is not a “process, machine, manufacture, or composition of matter” within the meaning of 35 U.S.C. 101.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation “means for establishing an account.” However, it is not clear from the specification what structure performs this function. On page 2 of the Appeal Brief filed February 28, 2008, the Applicant attempts to identify the structure as the implicitly disclosed computer which runs the traffic management system. In other words, Applicant is

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identifying the “means for establishing an account” as the entire traffic management system.

However, it is clear based on the claim language that the means for establishing an account is *not* the entire management system. The preamble of the claim refers to a traffic management system.

If the Applicant intended the structure that corresponds to the means for establishing an account to be the entire traffic management system, the Applicant would have not used different language (i.e., the means plus function limitation) to refer to that structure. The Applicant would merely have referred to the traffic management system itself. Thus, since the Applicant is attempting to claim some *piece* of the traffic management system, it is incumbent upon the Applicant to clearly identify what that piece is. Failing this, the Applicant has not particularly pointed out and distinctly claimed the subject matter which Applicant regards as the invention.

Claims 2-4 are rejected for incorporating the deficiencies of claim 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-5 are rejected under 35 USC 103(a) as being unpatentable over the AltaVista Affiliate Program website (hereinafter “AltaVista”) in view of Sugiura et al. (“Query routing for Web search engines: architecture and experiments,” hereinafter “Sugiura”).**

Regarding claim 1, note that the preamble has been given patentable weight as it is necessary to give life, meaning, and vitality to the claim (see arguments at pp. 3 – 4 of the Appeal Brief filed February 28, 2008).

AltaVista shows a system for providing traffic management (comprising the system which implements the AltaVista Affiliate Program: see p. 1) on a computer network (the World Wide Web), wherein a referral provider (comprising an affiliate website provider: see p. 1) and a user computer (comprising the computer implicitly disclosed as the mechanism by which customers access the affiliate website: see pp. 1 and p. 10) are in communication via the computer network (see p. 10), the referral provider predefining referral provider preferences via the traffic management system for routing traffic generated by the user computer's search request transmitted to the referral provider (comprising choosing a referrer search field which indicates a preference that queries should be directed to, for example, the German-language altavista.de: see page 5), comprising:

- means for establishing an account for the referral provider (comprising the computer which serves and processes the application form shown on pp. 7 – 8), wherein the account includes an account name (comprising a site name: see p. 7), a unique identification (comprising a username: see p. 8) and a password (see p. 8); and
- a search referral module (comprising the module which directs user queries to the AltaVista site associated with the referrer search field).

AltaVista does not show:



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- wherein the routing of the traffic is dependent upon the search request transmitted by the user computer;
- at least one traffic management parameter; and
- wherein the search referral module analyzes the user computer's search request.

Sugiura shows:

- routing of traffic that is dependent upon the search request transmitted by the user computer (comprising directing a user's query to an appropriate topic-specific search engine: see section 3.2 on p. 421 and section 5 on p. 428);
- at least one traffic management parameter (comprising "topic terms," which control how user queries are mapped to various search engines: see section 3.3 on p. 421); and
- a search referral module that analyzes the user computer's search request (comprising the module which performs query expansion on a search request in order to determine the degree of relevance between that search request and the topic terms for a particular search engine: see section 3.4 on p. 422 and section 3.6 on p. 424).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of AltaVista with the traffic routing, traffic management parameter, and search referral module taught by Sugiura in order to provide users with high-coverage and high-precision searching (see Sugiura, Introduction, p. 1).

Regarding claim 2, the combination further shows wherein the management parameters comprise at least one of a designated target location (comprising a topic-specific search engine:

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see section 3.1 on p. 419 of Sugiura), and a set of key search terms (comprising topic terms: see section 3.3 on p. 421).

Regarding claim 3, the combination further shows wherein the search referral module routes traffic to the designated target location (comprising directing a user's query to an appropriate topic-specific search engine: see section 3.2 on p. 421 and section 5 on p. 428 of Sugiura).

Regarding claim 4, the combination further shows wherein the search request comprises a set of user defined search terms (for example, "Python": see section 3.1 on p. 419), and wherein the referral module compares the user defined search terms and the predefined set of key search terms of the management parameters (comprising performing query expansion on a search request in order to determine the degree of relevance between that search request and the topic terms for a particular search engine: see section 3.4 on p. 422 and section 3.6 on p. 424).

Regarding claim 5, note that the preamble has been given patentable weight as it is necessary to give life, meaning, and vitality to the claim (see arguments at pp. 3 – 4 of the Appeal Brief filed February 28, 2008).

AltaVista shows a process for dynamically managing traffic on a network (the World Wide Web) having a referral provider computer (comprising the computer which hosts an affiliate website: see p. 1) and a user computer (comprising the computer implicitly disclosed as the mechanism by which customers access the affiliate website: see pp. 1 and p. 10), the user

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computer communicating with the referral provider computer and transmitting a search request to the referral provider computer (see p. 10), comprising:

- establishing a participating account, wherein the account is established by the referral provider (see pp. 7 – 8); and
- routing traffic to a target location (for example, altavista.de: see page 5).

AltaVista does not show:

- defining traffic management parameters; and
- analyzing the search request input by the user computer.

Sugiura shows:

- defining traffic management parameters (comprising collecting “topic terms,” which control how user queries are mapped to various search engines: see section 3.3 on p. 421); and
- analyzing a search request input by the user computer (comprising performing query expansion on a search request in order to determine the degree of relevance between that search request and the topic terms for a particular search engine: see section 3.4 on p. 422 and section 3.6 on p. 424).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of AltaVista with the traffic management parameters and search request analysis taught by Sugiura in order to provide users with high-coverage and high-precision searching (see Sugiura, Introduction, page 1).

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**Claims 6 is rejected under 35 USC 103(a) as being unpatentable over AltaVista in view of Sugiura, and further in view of Davis et al. (US Patent No. 6,269,361, hereinafter “Davis”).**

Regarding claim 6, note that the preamble has been given patentable weight as it is necessary to give life, meaning, and vitality to the claim.

AltaVista shows a system for providing traffic management (comprising the system which implements the AltaVista Affiliate Program: see p. 1) on a computer network (the World Wide Web), wherein the system includes a referral provider for receiving communication into the system (comprising an affiliate website provider: see p. 1) from a user computer (comprising the computer implicitly disclosed as the mechanism by which customers access the affiliate website: see pp. 1 and p. 10) in communication with the system via the computer network (see p. 10), the referral provider predefining referral provider preferences via the traffic management system for routing traffic generated by the user computer's search request transmitted to the referral provider (comprising choosing a referrer search field which indicates a preference that queries should be directed to, for example, the German-language altavista.de: see page 5), comprising:

- a computer account entry for the referral provider, wherein the computer account entry includes an account name (comprising a site name: see p. 7), a unique identification (comprising a username: see p. 8) and a password (see p. 8); and
- a search referral module (comprising the module which directs user queries to the AltaVista site associated with the referrer search field).

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AltaVista does not show:

- wherein the routing of the traffic is dependent upon the search request transmitted by the user computer;
- at least one traffic management parameter which corresponds to a purchased search term; and
- wherein the search referral module analyzes the user computer's search request.

Sugiura shows:

- routing of traffic that is dependent upon the search request transmitted by the user computer (comprising directing a user's query to an appropriate topic-specific search engine: see section 3.2 on p. 421 and section 5 on p. 428);
- at least one traffic management parameter which corresponds to a search term (comprising "topic terms," which control how user queries are mapped to various search engines: see section 3.3 on p. 421); and
- a search referral module that analyzes the user computer's search request (comprising the module which performs query expansion on a search request in order to determine the degree of relevance between that search request and the topic terms for a particular search engine: see section 3.4 on p. 422 and section 3.6 on p. 424).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of AltaVista with the traffic routing, traffic management parameter, and search referral module taught by Sugiura in order to provide users with high-coverage and high-precision searching (see Sugiura, Introduction, p. 1).

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Davis shows search terms comprising purchased search terms (see col. 9, lines 18-41). It would have been obvious to modify the system of AltaVista in view of Sugiura to use purchased search terms in order to generate revenue based on the nature of the user's search query.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Biagini whose telephone number is (571) 272-9743. The examiner can normally be reached on weekdays from 8:30 AM to 5:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached at (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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